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Attorney Docket No. 05725.0857

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

Isabelle BARA *et al.*

Application No.: 09/763,058

§ 371 date: April 27, 2001

For: SOLID COMPOSITION WITH  
CONTINUOUS AQUEOUS PHASE  
COMPRISING A HYDROPHILIC  
GELLING AGENT AND A  
PARTICULAR FILLER AND USES  
THEREOF

)  
)  
) Group Art Unit: 1616  
)

) Examiner: Robert M. DeWitty  
)  
)

*9/Election  
w/transverse*

*Ret  
10-31-02*

Assistant Commissioner for Patents  
Washington, DC 20231

Sir:

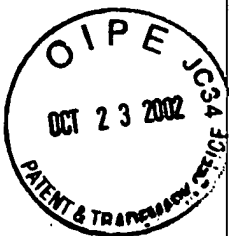
**RESPONSE TO ELECTION OF SPECIES REQUIREMENT**

In the Election of Species requirement dated September 24, 2002, the Office required Applicants to elect a single species from each of the following groups:

- (1) a hydrophilic gelling agent from claims 33-40;
- (2) a lamellar filler from claims 43-49;
- (3) a pulverulent phase further comprising a filler or pigment from claims 50-57;
- (4) a salt from claims 60-62;
- (5) a physiologically acceptable medium as in claim 63;
- (6) a cosmetically acceptable medium as in claim 64;
- (7) a water-soluble dye as in claim 65;

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- (8) a solvent from claims 66-67;
- (9) an oil from claims 68-74; and
- (10) an additional compound from claim 81.

The election of species requirement is respectfully traversed. To be fully responsive, however, Applicants provisionally elect, with traverse, the following species:

- (1) The hydrophilic gelling agent is microorganism exudate of claim 33;
- (2) The lamellar filler is mica coated with titanium oxide of claim 46;
- (3) The pulverulent phase further comprises starch of claim 50;
- (4) The salt is magnesium chloride of claims 61-62;
- (5) The physiologically acceptable medium of claim 63 is water;
- (6) The cosmetically acceptable medium of claim 64 is water;
- (7) The water-soluble dye of claim 65 is disodium salt of ponceau;
- (8) The solvent is butylene glycol of claim 67;
- (9) The oil is silicone oil of claim 69; and
- (10) The additional compound of claim 81 is a moisturizer.

At least claims 30, 33, 36, 41-50, 60-69, and 75-85 read on the elected species.

Applicants traverse the election of species requirement on the grounds that the Office has not shown that there would be a serious burden to examine all of the claimed species. In fact, the Office has failed to show that any burden exists. Applicants submit that it would be not be a burden to examine all of the claimed species because all of the claims recite the specific composition comprising at least one hydrophilic gelling agent, and at least one pulverulent phase comprising at least one lamellar filler, and wherein the composition has a specific hardness as recited, and therefore a search would

necessarily includes a search of all the claimed species. Accordingly, Applicants respectfully request that the full scope of the claimed invention be examined in this application without an election requirement.

If the Office chooses to maintain the election of species requirement, however, and should the elected species be found allowable, Applicants expect the Office to continue to examine the full scope of the claimed subject matter to the extent necessary to determine the full scope of the patentability thereof, *i.e.*, extending the search to non-elected species, as is the duty of the Office according to MPEP § 803.02 and 35 U.S.C. § 121.

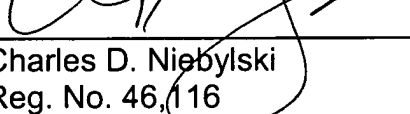
If the Office believes a telephone conference would be useful in resolving any outstanding issues, the Office is invited to call Applicants' undersigned representative at 202-408-4128.

Please grant any extensions of time required to enter this response and charge any additional required fees to our deposit account 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,  
GARRETT & DUNNER, L.L.P.

Dated: October 23, 2002

By:   
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